IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

CRP.No. 3348 of 2001

AGAINST THE COMMON JUDGMENT IN RCA.26/1999 AND CROSS APPEAL ON THE FILE OF RENT CONTROL APPELLATE AUTHORITY, THRISSUR. RCP.25/1997 OF THE RENT CONTROL COURT, THRISSUR

REVN. PETITIONER: FIRST RESPONDENT; APPELLANT:

A.S.PARVATHY KRISHNAN,
W/O.T.R.KRISHNAN,
SHORNUR ROAD, THRISSUR.

BY A.S.PARVATHY KRISHNAN (PARTY IN PERSON)

RESPONDENTS: APPELLANT & RESPONDENTS 2 TO 7: RESPONDENTS 1 TO 8:

1. JOSEPH ALIAS JOSE, S/O.ROSILY,
MARCANTILE FUND, SHORNUR ROAD,
THRISSUR – 1.

2. ROSILY, W/O.MATHEW (DIED)

3. DAVID, S/O.ROSILY

4. ROY, S/O.ROSILY

5. ROBIN, S/O.ROSILY

6. ANEESA, D/O.ROSILY

7. NEETHA, D/O.ROSILY

8. SHEEMA, D/O.ROSILY

RESPONDENTS 2 TO 8 ARE RESIDING AT
CHIRAMEL HOUSE, NEAR ST.JOSEPH CONVENT,
MISSION QUARTERS, THRISSUR.

RESPONDENTS 1 AND 3 TO 8 ARE RECORDED AS THE LEGAL REPRESENTATIVES OF THE DECEASED SECOND RESPONDENT AS PER ORDER DATED 3/8/2007 ON MEMO DATED 17/11/2004.

BY ADV. SRI.N.P.SAMUEL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 3/08/2007, THE COURT ON 5/10/2007 PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &
K.T.SANKARAN,JJ.

C.R.P.NO. 3348 OF 2001

Dated this the 5th October, 2007

O R D E R

SANKARAN, J.

The landlord is the revision petitioner. She filed the Rent Control Petition before the Rent Control Court, Thrissur under Sections 11(2)(b), 11 (3), 11 (4) (iii) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act. The Rent Control Court allowed the petition under Section 11(4)(iii) and dismissed the petition under Sections 11(2)(b), 11(3) and 11(8) of the Act. The tenant filed an appeal before the Appellate Authority challenging the order under Section 11(4)(iii). The landlord filed a Memorandum of Cross Objection challenging the findings of the Rent Control Court under Sections 11(2)(b), 11(3) and 11(8). The Appellate Authority allowed the appeal filed by the tenant and dismissed the Memorandum of Cross Objection filed by the landlord. Thus the Rent Control Petition stood dismissed.

2. The parties are referred to in the rank in which they are arraigned in the Rent Control Petition. The petition schedule building was let out to one Mathew, the predecessor-in-interest of the respondents. The first respondent is his widow and respondents 2 to 8 are the children of Mathew. The lease was in the year 1968 fixing a monthly rent of Rs.30/-. The rate of rent was enhanced to Rs.75/- as per the order in R.C.P.No.181 of 1978.

3. According to the petitioner, tenants failed in payment of rent from December, 1996 onwards. The petition schedule building consisting of several rooms faces the public road on the eastern side. The petition schedule building is room No.29/670. Room on the northern side of the petition schedule building is in possession of the petitioner where an STD booth is being run. The room on the further north is occupied by the petitioner's husband, who is a retired Engineer. On the rear side of the petition schedule building, there is a two storeyed residential building, which was reconstructed in the year 1994. That residential building was let out to tenants. The way leading to the said residential building was provided towards the northern side and thereafter, towards east leading to the public road on the eastern side. On the northern side of the said residential building, the house of the petitioner is situated, in which, she is residing. The tenants in the residential building on the southern side used the way in front of the house of the petitioner so as to reach the public road. It is stated that this causes much difficulty to the petitioner. She wants to provide a separate way to the tenants of the residential building. She bona fide requires the petition schedule building for providing a passage to the tenanted residential building situated on the rear side of the petition schedule building. On demand by the petitioner, the tenants agreed to vacate, but later, resiled from the promise. The bona fide requirement projected by the petitioner is to remove the shutter on the eastern side and

wall on the western side of the petition schedule building so that a passage could be formed to the rear side of the building.

4. The petitioner also stated that the respondents are in possession of several other buildings and therefore, she is entitled to an order of eviction under Section 11(4)(iii). It was pointed out that several buildings belonging to the respondents are available for them for conducting the business run in the petition schedule building. The ground urged under Section 11(8) is to the effect that the petitioner is conducting an STD booth in the room on the northern side of the petition schedule room. The petitioner needs additional accommodation for expanding the business run by her.

5. The respondents contested the case and denied the bona fide need urged by the petitioner. It was also contended that the other grounds raised by the petitioner are also not available in her favour. It was stated that after the death of Mathew in 1968, the second respondent continued to run the business in the petition schedule building in the name and style “Mercantile Fund”. The rent fell due only because of the refusal of the petitioner to receive the rent. However, the arrears of rent was subsequently paid. The residential building situated on the rear side of the petition schedule building is an old one and it was reconstructed in the year

1994. The access to that building was through the space which is now occupied by the room in the possession of the petitioner. The petitioner closed that pathway and converted it into a room wherein she is conducting the STD booth. It was contended that the bona fide requirement is, therefore, not genuine. Having closed the direct access and having provided another way to the tenants of the residential building, it was contended that the petitioner is not entitled to put forward a bona fide need to demolish the petition schedule building and to provide a direct access to the tenants of the residential building. It was also contended that the respondents are not in possession of any other building suitable for conducting their business in the petition schedule room. The petitioner has filed a suit claiming enhancement of rent and the same is pending.

6. Before the Rent Control Court, the husband of the petitioner was examined as PW1 and Exts.A1 to A18 were marked. On the side of the respondents, RWs.1 and 2 were examined and Exts.B1 to B6 were marked.

7. We shall deal with the ground under Section 11(3) at first. It is not in dispute that the main building of which the petition schedule building forms part faces the Thrissur-Shornur road on the eastern side. On the rear side of the building, the residential house of the petitioner is situated. On the southern side of the residential building and on the rear side of the

petition schedule building, another residential building belonging to the landlord, which has been let out to the tenants, is situated. The bona fide need put forward is to demolish the petition schedule room so as to provide a passage to the tenanted residential building on the rear side. The petitioner stated that the pathway presently being used by the tenants of the residential building passes through the court-yard of the petitioner's residence and this causes great inconvenience to the petitioner and her family. It is also stated that the tenants of the petitioner made a request to the petitioner to provide a separate way for them. The courts below rejected the case of the petitioner under Section 11(3) on the ground that the petitioner could demolish the room in her possession so as to provide a way to the rear side.

8. The petitioner's husband appeared and argued the case on her behalf with the permission of the court. He submitted that the findings and conclusions arrived at by the authorities below under Section 11(3) are illegal and perverse warranting interference under Section 20 of the Act. He also submitted that it is for the landlord to decide which room is to be demolished in order to provide a passage to the building on the rear side.

9. Sri.N.P.Samuel, learned counsel appearing for the respondents contended that in order to attract Section 11(3), the need must be the need

of the landlord for his own occupation or for the occupation by any member of his family dependant on him. In the instant case, even if the case put forward by the petitioner is accepted as true, the need for occupation is not for herself or for any member of her family depending on her as provided in Section 11(3). The counsel submits that the need for the use of the tenants of the landlord does not constitute a bona fide need under Section 11(3) of the Act.

10. In **Kunhamma** v. **Akkali Purushothaman** (2007 (3) KLT 599 (SC)), the Supreme Court dealt with the contention raised by the tenant that the bona fide need visualized under Section 11(3) should be equated with physical occupation of the premises by the landlord after ejectment and would not therefore not include its demolition for the purpose of widening a passage to another property belonging to the landlord. It was held as follows:

> "It is virtually the accepted position since long that the personal necessity envisaged under the Act would include repossession of the demised premises by the landlord for the purposes of its demolition so as to widen the entrance to another building belonging to the landlord in the immediate vicinity."

The Supreme Court relied on the decisions in **Ramniklal Pitambardas Mehta** v. **Indradaman Amratlal Sheth** (AIR 1964 SC 1676); **Sarada and others** v. **M.K.Kumaran** (1969 KLT 133) and **Krishna Menon** v. **District**

Judge (1988 (1) KLT 131).

11. In **Sarada and others** v. **M.K.Kumaran** (1969 KLT 133 = 1968 KLJ 839), eviction was sought in order to provide a direct approach from the road to the backyard of the building where the landlord proposed to construct a lodging house. Dealing with that contention it was held:

> "'Occupation' does not necessarily refer to residence. An owner can occupy a place by making use of it in any manner. The fact that the pathway is intended for the customers of the respondent to go to the lodging house and the Komalavilas Restaurant does not mean that the respondent will not be in occupation of the same. ..... The respondent for the purpose of the pathway is only going to demolish the superstructure or the edifice enclosing the space. The pathway will be enclosed on the sides by the walls and the pathway which was part of the original building will become part of the lodging houses to be constructed by the respondent. Thus it will be a building itself as defined by S.2(1) of the Act. The conversion of the existing building into a pathway for the use of the respondent is a need covered by S.11(3) of the Act and the plea of the revision petitioners is therefore without any substance. ..... When Section 11(3) allows a landlord to recover the building from the tenant for his *bona fide* need and when there is nothing in the said provision to restrict the use to which the landlord can put the building after recovery I do not find any principle of law under which a liberal interpretation in favour of the tenant is possible..."

12. In **Krishna Menon** v. **District Judge** (1988 (1) KLT 131), the landlord required the landed space covered by the tenanted building to be used as a passage to the newly constructed multi-storeyed building belonging to the landlord and for that purpose, wanted to demolish the tenanted building. Dealing with that need put forward by the landlord, it

was held thus:

> "5. The legislature while framing S.11(3) of the Act did not say that the occupation must be of the building as such. Though the need is of the building, the occupation is not confined to the building as such. The definition of "building" contained in S.2(1) of the Act includes the garden, grounds etc., which are appurtenant to the building. It is important to note that the definition includes any *building* also besides part of a building. The controlling words in S.2 direct that the definition is not meant to be exhaustive nor restrictive because even the items enumerated and included are subject to variations if "the context otherwise requires". The definition provides sufficient play at the joints while fixing the parameters of the scope of the expression "building" in different situations. It enables the Rent Control Authorities to mould the reliefs in accordance with the exigency in each case. The contextual flexibility permitted in S.2(1) is meant to be used according to the particular need in different situations. If S.11(3) of the Act is to be given a narrow interpretation that it could be applied only if the building is kept up as such even after the eviction such an interpretation is likely to bring about unjust consequences. Eg: A person owning large vacant area behind an old or outmoded building abutting a main road in a commercially important locality of the town, is desirous of utilising the remaining vacant area for construction of a storeyed building complex or a big hotel or a cinema theatre. Can he not use the space occupied by the old building as car park, or as passage to the new building? If he cannot do so, the entire rear portion may become practically useless. This would be one of the hard consequences if S.11(3) of the Act is given a narrow or strict interpretation. Such consequences can be averted if S.11(3) is given a wider interpretation, as was done by Krishnamoorthy Iyer, J. in Sarada's case. Legislative concern for common sense and Justice must be presumed while interpreting statutes.,,,"

13. In **Narayanankutty** v. **Abiida Abdul Kareem** (2002(2) KLT 507), the question which came up for consideration was whether eviction

sought for by the landlord so as to convert the building as a pathway for the proposed multi-storeyed building would come within the scope of Section 11(3) or 11(4)(iv) of the Act. The Division Bench held as follows:

> "8. S.11(3) also uses the expression, "for his own occupation". Contention was raised by the counsel for the tenant that the expression "for his own occupation" would mean that the landlord himself should occupy the tenanted premises or building newly constructed in the tenanted premises after demolition. We are of the view, the expression "occupation" has to be given a wider meaning. It is true that after the tenanted premises is vacated, landlord if *bona fide* needs the building he can occupy it or a person depending upon him as the case may be. The question is whether he can occupy the same tenanted premises once the premises is required for a passage to the newly constructed building. It is physically impossible to occupy the tenanted premises on its demolition since the area is to be used as a passage. Passage to newly constructed building could be used not only by the landlord but the public at large who come to the newly constructed building. One cannot expect the landlord or dependent alone is in occupation of the area left as a passage after demolition of the tenanted premises. The word "occupation" has got different shades of meaning. Chambers 20th Century Dictionary gives the meaning of "occupation" as the act of occupying, state of being employed or occupied, that which occupies or takes up one's attention. Landlord can also occupy passage leading to the building which is appurtenant. The purpose projected in this case by the landlord is *bona fide*. What is required is demolition of the tenanted premises so as to use it as a passage to the newly constructed building. That means, on demolition the premises is not in exclusive occupation of the landlord but could be used by others as well."

14. It is true that the open space which would be available after demolition of the petition schedule building, would not be exclusively occupied by the petitioner for access to any building exclusively occupied

by her. The pathway proposed to be provided would lead to the residential building belonging to the petitioner, which is in the occupation of her tenants. The question is whether such a requirement would satisfy the bona fide need of the landlord “for his own occupation” under Section 11 (3). The contention raised by the tenant is that Section 11(3) restricts the bona fide need for own occupation by the landlord or for the occupation by any member of his family depended on him. In other words, the contention put forward by the tenant is that user of the pathway, provided after demolition of the tenanted building, by another set of tenants of the same landlord for the convenient enjoyment of another tenanted building would not be the requirement of the landlord under Section 11(3). We are not inclined to accept this contention put forward by the tenant in view of the Division Bench decision in 2002 (2) KLT 507 and 1988(1) KLT 131. The word “occupation” requires a liberal construction. It cannot be restricted to the user of the building alone. User of the land after demolition of the tenanted building would also come within the scope of “occupation” under Section 11(3) of the Act. Occupation of a building by the landlord for his own use after eviction of the tenant under Section 11(3), is to be distinguished from the user of the land after demolition of that building. After demolition what is available is the land. The occupation would be of such land thereafter. In such cases, the question to be enquired into is whether the need put forward by the landlord is bona fide. If the need put

forward is bona fide, the mere fact that the pathway made after demolition of the building would used by several persons including the landlord or by his tenants would not take the need out of the purview of Section 11(3).

15. It is for the landlord to decide through which portion he is to provide a way to the rear side of the building. The tenant cannot dictate to the landlord that the pathway should be through another portion. Of course, to ascertain whether the need put forward is bona fide, the court would be justified in considering all the facts and circumstances of the case and in that process the Court could also take into account the contention put forward by the tenant. The mere fact that the landlord is in occupation of the northern room and on demolition of that room a way could be provided to the rear side is not a ground to deny an order under Section 11 (3) to the landlord. The question to be enquired into is whether the need put forward is genuine, and not whether the need could be achieved by other modes. If the need is bona fide, an order could not be denied to the landlord on the ground that the same object could be achieved by demolishing another room.

16. On a consideration of the facts and circumstances of the case and the contentions put forward by the parties, we are of the view that the courts below were not justified in denying an order to the landlord under

Section 11(3). The courts below did not properly comprehend the principles of law and therefore, interference under Section 20 of the Act is warranted.

17. The next question involved in the case is regarding the point of time with reference to which an application under Section 11(4)(iii) is to be considered. It is also necessary to consider the question whether to attract Section 11(4)(iii), all the legal representatives of one of the deceased tenants should be in possession of another building or whether it is sufficient if some of them occupy such building. In the instant case, one Mathew was the tenant. The Rent Control Petition was filed against his legal representatives including his widow Rosily. Rosily died during the pendency of the Rent Control Appeal. She owned other buildings which on her death were inherited by her children, who are the rest of the respondents in the Rent Control Petition. The Rent Control Court, after considering the oral and documentary evidence in the case, held that the tenants are in possession of other buildings in the same town, reasonably sufficient for their requirements. Two of those buildings belonged to Rosily; one building (Chiramel building) situated on the opposite side of the petition schedule building and another one consisting of two rooms after vacating the tenant therefrom. It has also come out in evidence that the second respondent C.M.Joseph is conducting another business under the name

and style “St.Francis Furniture” in Door No.29/581 and Angana Jewellery in a building belonging to the Cochin Devaswom Board. A Commissioner was appointed to ascertain the nature and possession of the other buildings allegedly in the possession of the tenants. On the evidence available in the case, the Rent Control Court came to the conclusion that though Chiramel building stands in the name of Rosily, her children Joseph and David were collecting rent from the tenant and some of the rooms in that building are lying vacant. As far as the other building in the name of Rosily is concerned, the Rent Control Court held that after evicting V.K.Narayanan Namboodiripad, the said two storeyed building is in the possession of the respondents/ tenants.

18. The Appellate Authority reversed the finding of the Rent Control Court under Section 11(4)(iii) on the ground that the two buildings exclusively belonged to Rosily and it is not established that it is possessed by the second respondent Joseph. This reasoning was made by the Appellate Authority on the basis that the petition schedule building is occupied by the second respondent Joseph and unless it is established that Joseph is in occupation of the building owned by Rosily, an order under Section 11(4)(iii) could not be passed in favour of the landlord. As far as the building belonging to Cochin Devaswom Board is concerned, the Appellate Authority held that it is not established that C.M.Joseph and

C.M.Davis who conducted business therein are the same C.M.Joseph and C.M.Davis who are respondents 2 and 3 herein, though it is noted that at the time of visit of the Commissioner, the fourth respondent was found in the helm of arrairs in respect of the business conducted in that building.

19. Section 11(4)(iii) provides that if the tenant already has in his possession a building or subsequently acquires possession of or put up a building reasonably sufficient for his requirements, in the same city, town or village, the landlord would be entitled to an order of eviction. It is not necessary that the tenant should own an alternate building. It is sufficient if he has already in his possession another building or subsequently acquires possession of another building. In the instant case, on the death of the tenant, the tenancy right devolved on all the respondents including Rosily. On the death of Rosily, her rights devolved on the other respondents. If the respondents are in possession of another building satisfying the other requirements of Section 11(4)(iii), it would enable the landlord to get an order of eviction. The question is whether all the legal representatives of the deceased tenant should acquire possession or own such alternate accommodation jointly or whether it is sufficient if some of them acquire possession or own such building. The decision on this point would rest on the facts and circumstances of each case. For example, a tenant dies and he is survived by his widow and children ; one of them constructs a

building for his own use with his own funds. If it is established that the alternate building was constructed or occupied by one of the legal representatives in his individual capacity, it would be very harsh to pass an order under Section 11(4)(iii), which would have the effect of depriving the other legal representatives of the tenant of the right to continue to enjoy the tenancy right. It is also possible that in order to defeat the rights of the landlord, instead of acquiring possession of another building in the name of all the legal representatives of the deceased tenant, one or some of them may acquire possession of another building in their name though really such acquisition may be for the benefit of all the legal representatives. In such cases, on the facts of the case, if the Court comes to the conclusion that if the other building is really possessed or owned by all the legal representatives, an order could be passed under Section 11(4)(iii). Section 2(b) of the Act defines tenant. The definition includes “the heir or heirs of a deceased tenant”. The contention of the respondents that the petition schedule building is occupied and possessed by the second respondent Joseph alone after the death of the original tenant is not relevant in deciding whether possession of the other buildings could be reckoned for the purpose of Section 11(4)(iii), since on the death of the original tenant the tenancy right devolves on all his legal representatives including second respondent Joseph. Running of business in the petition schedule building by Joseph alone, even if it is true, is an internal arrangement among the

legal representatives of the original tenant. That should not alter or affect the right of the landlord to collect rent or to file an appropriate application under the relevant provisions of the Rent Control Act. The Appellate Authority was clearly in error in declining to grant relief under Section 11(4)(iii) on the ground that the petition schedule building is occupied by the second respondent Joseph and that the other building is not possessed by him but by some other legal representatives of the tenant.

20. Section 11(4)(iii) does not make any fetter on the right of the landlord to get an order of eviction if the tenant acquires possession of another building, no matter whether such acquisition is made by all the legal representatives of the deceased tenant or whether it is by one among them. At the same time, court should not be forgetful to the fact that one or some of the legal representatives of the tenant could legally acquire and possess properties of his own or their own unconnected with and unrelated to the occupation of the tenanted building by some other legal representatives of their predecessor. The various eventualities on the death of a tenant, as to how the legal representatives of the tenant would continue to run the business, whether some of the legal representatives would prefer to dissociate themselves with the business conducted therein or whether some of them would stand apart from the affairs of the family and acquire properties in their own name or for their own benefit, are all

matters peculiar to the fact situation in each case and would depend on the arrangement entered into among the legal representatives of the tenant. A principle of universal application cannot be evolved to meet all such contingencies at all points of time. Facts and circumstances of each case have to be taken into account and analysed to come to a conclusion whether the legal representatives of the tenant have acquired possession of another building within the meaning of Section 11(4)(iii) and whether the landlord is entitled to an order of eviction on that ground. If the Court comes to the conclusion that the other building is acquired by one or some of the legal representatives for their own benefit with their own funds and that such person or persons are unconnected with or unrelated to the occupation of the tenanted premises, the Court could rightly deny relief to the landlord under Section 11(4)(iii). On the other hand, if the court comes to the conclusion that acquisition of possession of another building in the name of one or some of the legal representatives of the tenant was made deliberately to defeat the rights of the landlord to claim eviction under Section 11(4)(iii), and that the tenanted building and the other building are really occupied by the legal representatives including the person or persons in whose name possession or title of the other building is acquired, the Court would be justified in passing an order of eviction under Section 11(4)(iii).

21. We hasten to add that in cases where this question arise, the

burden of proof would be on the tenants resisting the Rent Control Petition to establish that the other building was acquired or possession of the same was acquired by one or some of the legal representatives alone and that they have no connection or no right in the business being conducted in the tenanted premises or that they do not occupy the tenanted premises. The landlord cannot be expected to establish the arrangement among the legal representatives of the tenant in the matter of occupation of the tenanted building and in the matter of acquisition of possession of other buildings. Such matters are exclusively within the knowledge of the tenants and naturally, the burden of proof should be on them. In the case on hand, the tenants have not established that the other buildings possessed by some of the respondents are in exclusion of the other legal representatives of the original tenant. The respondents have also not established that on the death of Rosily all of them did not inherit her rights in the buildings owned by Rosily. What is the arrangement among the legal representatives of the original tenant in so far as the petition schedule building is concerned is also not established so as to come to a definite conclusion that all other legal representatives other than Joseph are not in occupation of the petition schedule building.

22. The point of time with reference to which a relief under Section 11(4)(iii) is to be granted is the next question to be considered. It is well

settled by the decisions of the Supreme Court that while granting relief, subsequent events also can be taken note of. Vide: **Ram Kumar Barnwal V. Ram Lakhan: (2007) 5 SCC 660 = 2007 (3) KLT 945 (SC); Psupuleti Venkateswaralu V. Motor & General Traders: (1975) 1 S.C.C. 770 = A.I.R. 1975 S.C. 1409; Rameshwar and others V. Jot Ram and others: A.I.R. 1976 S.C. 49; Om Prakash Gupta V. Ranbir B. Goyal: (2002) 2 S.C.C. 256.** In **Rameshwar and others V. Jot Ram** (supra**),** it was held that "where a cause of action is deficient but later events have made up the deficiency, the court may, in order to avoid multiplicity of litigation, permit amendment and continue the proceeding, provided no prejudice is caused to the other side." In ***Om Prakash Gupta's case*** (supra), the conditions for taking note of subsequent events and moulding the relief are stated, thus: " (i) That the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties ; and (iii) that such subsequent event is brought to notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."

23. In the present case, Rosily died during the pendency of the appeal. She owned two buildings. It is inherited by all the other

respondents. There is no evidence to indicate that it is inherited by one or some of her children. The legal representatives of Rosily and the original tenant Mathew are the same persons. The Rent Control Court accepted the case of the landlord that the buildings belonging to Rosily are really possessed and managed by her children. It is also in evidence that one such building is lying vacant and vacant rooms are available in the other building. At present, the building which belonged to Rosily are owned by all the other respondents. This subsequent event, in our opinion, is relevant and can be taken note of by the court dealing with an application under Section 11(4)(iii). The expression used in Section 11(4)(iii) is "the tenant already has in his possession a building or subsequently acquires possession of or puts up a building". Past as well as the present events come within the purview of Section 11(4)(iii). There is nothing to indicate that the present event is to be restricted till the filing of the Rent Control Petition. Subsequent events also would come within the scope of Section 11(4)(iii). In **Kanhangad Co-op. M.S.Society Ltd.** v. **Ganapathy Kamath** (1995(1) KLT 681), a Division Bench of this Court has taken the view that the time with reference to which the sufficiency of the tenants' requirements as envisaged in Section 11(4)(iii) is the time when the landlord demands vacant possession from his tenant. This conclusion was arrived at on the following reasoning:

> "10. The legislative intention in providing a ground such as 11(4)(iii) is to restrict the tenant's right to continue in

> the tenants premises. This restriction is based on public policy. One of the objects of the enactment of this Act was to prevent unreasonable eviction of the tenants from rented buildings in places where accommodation problem could not be solved (vide Standard Cashew Industries v. N.Krishnan, AIR 1981 Ker.24). Yet the Act is so schemed as to disarm a tenant who is not genuinely interested in using the tenanted premises, or one who clings on unreasonably to such premises. The enactment has sought to keep the genuine interest of a tenant within the protected walls of the statute. So when a tenant comes into possession of a building the landlord can inform the tenant to move into that building after vacating his building. In such a case all what the rent control court is to examine is whether that building of the tenant is sufficient for his requirements."

Unless the sufficiency or otherwise of the requirement is tested with reference to a state of affairs as on the date of the Rent Control Petition, the ground available to the landlord under Section 11 (4) (iii) could be defeated by the tenant by his deliberate acts. The tenant could very well defeat an application under Section 11(4) (iii) by altering the status quo available as on the date of the petition. The interpretation made in ***Kanhangad Co-operative M.S.Society's case*** is taken to meet such a contingency. The contingency and factual situation are quite different in the present case. In the case on hand, the subsequent event enables the landlord to get an order of eviction, and that subsequent event occurs during the pendency of the proceedings. Should he file another Rent Control Petition under Section 11(4)(iii) or could he claim that relief in the pending petition on the same ground is a question involved herein. We are of the view that multiplicity of proceedings is certainly not the intention of

the law makers. If by acquiring possession of another building the tenant loses protection and the landlord gets a right, nothing prevents the landlord from claiming that benefit in a pending proceeding initiated by him for eviction, on the same ground, namely, Section 11(4)(iii). Such an interpretation would avoid multiplicity of proceedings and also would check subsequent deliberate acts tending to defeat the right of the landlord under Section 11(4)(iii). No prejudice would be caused to the tenants if the subsequent events are also taken note of. Taking note of the subsequent events, alongwith the facts established in the case with reference to the state of affairs as on the date of the Rent Control Petition, we are of the view that the landlord is entitled to get an order under Section 11 (4) (iii) of the Act.

24. It is well settled that when the landlord establishes the ingredients of Section 11 (4) (iii), the burden shifts to the tenant to prove that the alternate building is not reasonably sufficient for his requirements. See **Ahmed** V. **Krishna Lal** (2005 (3) K.L.T. 1004); **Kanhangad Milk Supply Society Ltd.** V. **Ganapathy Bhat** (1995 (1) K.L.T. 681); **Kunhiraman** V. **Kumaran** (2004 (2) K.L.T. 674). The tenants have not discharged the burden of proof cast on them.

25. As rightly held by the courts below, Section 11(8) would apply

only if the building is required for the personal use of the landlord. The facts pleaded and the requirements projected would not justify the grant of an order under Section 11(8).

26. For the aforesaid reasons, we set aside the judgment passed by the Appellate Authority and allow the Rent Control Petition under Section 11(3) and 11(4)(iii). In the facts and circumstances of the case, three months' time is granted to the respondents to vacate the premises, provided an affidavit is filed by the respondents before the Rent Control Court within a period of three weeks from today undertaking to vacate the premises on or before the expiry of three months from today and also on condition that the respondents shall pay the arrears of rent, if any, within one month and continue to pay the rent to the landlord till they vacate the premises.

The Civil Revision Petition is allowed as above.

(K.BALAKRISHNAN NAIR)
Judge

(K.T.SANKARAN)
Judge

ahz/

K.BALAKRISHNAN NAIR &
K.T.SANKARAN, JJ.

C.R.P.NO. 3348 OF 2001

O R D E R

5th October, 2007